

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1026 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ABDUL RAHEMAN MOHMAH PATEL

Appearance:

MR SAMIR DAVE, APP for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/11/2000

ORAL JUDGEMENT

#. The order of the Sessions Judge of Panchmahals at Godhra, in Criminal Appeal No.07 of 1997 dated 11th September, 1998, is challenged by petitioner by this petition under Article 226 of the Constitution.

#. Heard the learned counsel for the petitioner.

#. The facts of the case are that the Forest Officer of the State of Gujarat received information and during watch they found that a tractor bearing registration No.GAM-6053 and trolly No.GRY-6183 of the respondent were carrying the forest produce and therefore offence No.66/95-96 was registered and the tractor, trolly and the forest produce were produced before the Deputy Conservator of Forest concerned. The Dy.Conservator of Forest concerned, vide order dated 28th May, 1997 ordered for confiscation of forest produce as well as vehicles. The respondent-preferred Criminal Appeal aforesaid before the Sessions Court, Panchmahals and under the impugned order, the appeal was partly allowed and the order passed by the Deputy Conservator of Forest confiscating the vehicles of the respondent was modified and it is substituted with fine of Rs.10,000/= to be paid by the respondent within fifteen days from the date of the order. Hence this special criminal application.

#. I find sufficient merits in the contention of the learned counsel for the petitioner that the order of the learned Sessions Judge, Panchmahals at Godhra, is wholly perverse. The learned Sessions Judge has held that the Forest Officer has every right to confiscate the forest produce and vehicles in dispute in respect of which the offence is committed under the Indian Forest Act and which is seized by the officer. It is further held that the order passed by the Deputy Conservator of Forest cannot be said to be illegal and against the provisions of the Indian Forest Act. After recording these findings, I fail to find any justification in the approach of the Sessions Judge, to take a lenient view and to modify the order for confiscation of the vehicles by substituting for it, an order of imposing fine of Rs.10,000/=. It is true that u/s.61D of the Indian Forest Act as amended by the State, the appellate court can modify the order passed by the Forest Officer (here Deputy Conservator of Forest) but that does not mean that in every case, the order has to be modified. This power for modification of the order has to be judiciously exercised and not only on whims. The order has been interfered with by the appellate court on the ground that the value of the forest produce which was transported was of Rs.2400/= and the transport charges which was to be recovered were only Rs.400/= and it was considered that if some amount of fine is imposed, ends of justice will be met. If it is not done, then what the learned appellate Court stated that great injustice will be done

to the owner of the vehicles. It is a case where the forest produce were transported in a vehicle without a valid permit or pass. This fact was known to the respondent and if he transported such produce belongings to the State Government, the matter should not have been taken leniently as what it has been done by the learned appellate Court. The power of modification of the order passed by the Forest Officer has to be exercised only where it is satisfied that the respondent is innocent as without his consent or connivance, the vehicles have been used by his agent or driver for transport of forest produce of State without valid permit or pass. The value of the forest produce transported and the transport charges to be paid is not relevant and of any substance in each and every case. It is not a law that a lenient view has to be taken, meaning thereby, the value of the vehicle in comparison to the value of the forest produce transport to be taken into consideration. In this case, that what precisely has been done. The learned Sessions Judge has not considered the important aspect that indiscriminately the forest produce are being cut and it endangers the ecological balance and endangers the life of the citizens of the country. The cases of forest offences are increasing day by day. It may be as a result of either want of a vigilant check of the forest officer on these illegal activities carried out by unscrupulous criminals or Mafias as well as in such matters also lenient view is taken by the courts. If the vehicle which is involved in the forest offence is released from confiscation, by imposing fine it will endanger the society, it will adversely affect the ecological balance, and ecological security of the country as well as it will give encouragement to the persons who are involved in such offence. This order passed by the learned Sessions Judge is certainly a perverse order which cannot be allowed to stand. It is held by the learned appellate court that the respondent was knowing that his vehicles are used for illegal transport of forest produce. Still the court released the vehicles by substituting fine in lieu of confiscation thereof.

#. As a result of aforesaid discussion, this petition succeeds and the same is allowed. The order of the learned Sessions Judge, Panchmahals at Godhra, is quashed and set aside. It is ordered that the vehicle be forthwith seized and put to auction and in case the sale proceeds on the sale of the vehicle in auction received is less than Rs.10,000/=, then it may not be put to auction and the respondent to pay Rs.10,000/= as fine, as imposed by the learned Sessions Judge, Panchmahals,

Godhra. If the amount received on auction of the vehicle is more than Rs.10,000/= then that amount to be retained by the Government and if the amount of penalty of Rs.10,000/= is deposited by the petitioner, the same be refunded to him. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)